



March 21, 2005

BEST IMAGE AVAILABLE

Board of Governors of the Federal Reserve System  
 Jennifer J. Johnson, Secretary  
 20<sup>th</sup> Street and Constitution Ave, N.W.  
 Washington, DC 20551

Subject: R-1217

Dear Ms. Johnson:

Boeing Employees' Credit Union (BECU) appreciates the opportunity to provide comments on your advanced notice of proposed rulemaking (ANPR) which is starting a review of the open-end credit rules of Regulation Z. BECU is a state-chartered, federally insured credit union with assets of \$5 billion and a membership base of over 387,000.

Your ANPR requested specific issues to address:

1. Should the review of Regulation Z be in stages, which begins with this review of open-end credit? Are some issues with regard to open-end credit so intertwined with other Truth in Lending Act (TILA) issues that another approach to this review should be considered? If so, what are those issues and what other approaches should be considered?

Answer: Yes, open-end lending should be looked at separately from other reviews of the TILA issues. Open-end lending is, by its very nature, very distinctive from closed end credit.

2. What formatting rules would enhance the ability of consumers to understand account-opening disclosures? Should certain key disclosures be segregated from contractual terms or other information so that these disclosures are more clear and conspicuous? Should certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements necessary and what should those requirements be?

Answer: The regulation already requires that the key disclosures are provided in a prominent location. We support that. We believe that the annual percentage rate (APR) should be more conspicuous on all lending disclosures. However, the 18-point type requirement for the credit card disclosures should be changed to mirror the APR disclosure requirements for closed-end disclosures. We feel the 8-point type size minimum for text ensures readability. Creating larger type size, font or formatting for different disclosures creates a situation where important information is competing with other important information and can overload a person's ability to make sense of what is being provided to them.

3. What formatting or other navigational aids will make the account-opening disclosures more effective throughout the life of the account? One idea may be a table of contents that a consumer could refer to on an as-needed basis throughout the life of the account.

Answer: We support the required disclosures should be prominent and conspicuous. Adding guidelines about how that can be achieved would be helpful, e.g. table of contents or formatting for paragraph header. However, we do not agree with requiring specific formatting or structure. Table of contents or larger font simply increase the length of an already lengthy disclosure.

4. Are there disclosures on the periodic statement that should be grouped together on the same page that would help consumer understanding? One idea may be to group together the "due date" and "please pay by date," which is the suggested date to submit payment in order for it to be received by the due date. Some consumers may now be confused and consider the "please pay by date" as the "due date" if these two dates are on different parts of the statement.

Answer: In our opinion, we do not believe it is an industry practice to provide two different due dates. While some creditors may provide an early "please pay date" so that consumers' payments will be received by the actual due date, this is not the usual. We feel the information that should be grouped together is the payment due date, the minimum payment due, and credit limit with credit available. Consumers may be better served to remove the requirement to provide the explanation of how the balance on which finance charge was computed. This is very lengthy and already provided in the terms and conditions contained in the account agreement.

5. Could the cost of credit be more effectively presented on the periodic statement if less emphasis were placed on how the fees are labeled and all fees were grouped together? What other approaches should the FRB consider?

Answer: We agree that it would be more effective if having similar items grouped together on the periodic statement. A majority of lenders already do that on their periodic statements.

6. How can formatting tools and navigational aids make the periodic statements more effective for consumers?

Answer: The difficulty with periodic statements is that a lot of information (e.g. transactional, informational, and directional) is required to be disclosed. Perhaps this task force could focus on the importance of the information disclosed and reduce the quantity that is required to be disclosed.

7. For credit card applications, certain disclosures must be presented in the form of a table, known as the "Schumer Box". Is the Schumer Box effective as currently designed? What format improvements should the FRB consider?

Answer: The 18-point type size for the APR distracts the consumer from other important items being disclosed. It is very important that fees are prominently disclosed. It would be far more reasonable to require the APR and fee information to be prominent, but when one is made so prominent, it overwhelms the other disclosures. While we feel the APR is an important factor, the fees that could occur due to the oversight of the consumer could potentially affect the APR is just as important to the consumer.

8. Should balance transfer fees be included in the Schumer Box? (Under current rules, this is optional, as long as the fees are clearly disclosed else on or with the application).

Answer: Yes.

9. How can formatting tools or navigational aids be used to more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures (including those that accompany convenience and balance transfer checks)?

Answer: We recommend adding a statement to refer to the account agreement for the terms and conditions regarding these types of transactions.

10. The FRB provides model forms and clauses to facilitate Truth in Lending Act (TILA) compliance. How can the existing clauses and forms be revised to improve their effectiveness?

Answer: There is not a great deal of model forms or clauses for open-end lending. Creditors have developed this based on what guidance is available from the FRB. If the FRB intends to develop

model forms and clauses, we hope that it will be based on what creditors have in place today. Our concern is that the FRB will develop model forms similar to the closed-end forms. In our opinion, that would not be effective or easily understandable since the two types of lending are so different.

11. What additional model forms and clauses should the FRB develop?

Answer: If initial disclosures and billing statements become model forms, then subsequent credit advances should become one as well.

12. What additional information is available regarding the navigability and readability of different formats or ways in which the formatting can improve the effectiveness of disclosures?

Answer: We recommend taking other applicable regulations into consideration when thinking about the formatting requirements (e.g. Privacy notice must be more conspicuous than other disclosures provided). Also, focusing on clear and easily understood, balanced with reasonable size of disclosures.

13. How can the FRB provide greater clarity with regard to categorizing fees as either "finance charges" or "other charges?" What types of fees should not be included as a "finance charge" and why should they be excluded? How should these fees be disclosed in order to provide uniformity with regard to disclosures and to facilitate compliance?

Answer: If a fee is required to obtain credit, in our opinion it should be considered a finance charge. Anything a creditor is charging above and beyond the actual fee should also remain a finance charge. If it is incidental, e.g. service, transactional, behavioral, etc., then it should be excluded from finance charges.

14. How do consumers learn about open-end credit fees and about any changes in these fees?

Answer: They learn about them when they apply for credit and are provided the initial disclosure and account agreement. The changes are provided in a change-in-term notice provided by the creditor.

15. What significance do consumers attach to the term "finance charge," as opposed to "fee" or "charge?"

Answer: Finance charge may be viewed by consumers as equaling interest paid on an account. A fee or charge would be a payment or cost of a service or activity.

16. Some have suggested classifying a fee as a finance charge if the payment is required to obtain credit. How would creditors determine if a fee was optional? Would this include a fee being excluded as a finance charge if the consumer was offered a credit plan without this feature? Would this approach result in useful disclosures for consumers and would they be able to compare costs of different credit plans? Would this approach be practical for creditors?

Answer: A fee would be optional if the consumer's action determines whether or not they incur the fee (e.g. over-limit fees, late fees, NSF fees). We can't envision offering consumers a credit plan without these features. This does not appear to be a practical way of approaching this.

17. The Regulation Z official staff commentary interprets "other charges" as those that are "significant" and related to the credit plan. Has this interpretation been effective? Is there a better interpretation? Other criteria to determine whether a fee should be considered an "other charge" may include the following: the amount of fee, the frequency in which the fee is likely to be incurred by a

consumer, the proportion of consumers likely to incur the fee, and when and how the creditor discloses the fee. Are these relevant factors and are there any others?

Answer: Yes the current interpretation has been effective and we can't think of any other criteria than what you have listed.

18. What other issues should be considered with regard to classifying fees. For example, do home equity lines of credit (HELOC) present unique situations?

Answer: The ability to combine fixed rate advances, variable rate advance and advances by means of a credit card-like device presents unique disclosure issues. However, the fees for each of these items are not unique to the type of credit being offered. We do not believe anything specific to HELOCs are needed.

19. How important is it that the classification of fees for open-end accounts mirrors the classification for closed-end loans? For example, excluding certain charges from the APR for open-end accounts are not consistent with a FRB recommendation in 1998 that "all required fees" be included in the APR for closed-end loans.

Answer: We don't feel that it's important for open-end to mirror closed end.

20. Fees for exceeding a credit limit are not considered "finance charges" but are considered "other charges." Should these fees always be excluded as a "finance charge," such as when a creditor does not require the consumer to bring the account balance below the established credit limit and then imposes the over-the-limit fee each month on a continuing basis?

Answer: Yes. Behavioral fees of this nature should be excluded from being a finance charge.

21. Credit card transactions may be authorized in situations in which the merchant or creditor cannot at that time determine if the credit limit will be exceeded by that transaction. How do card issuers explain their practice of approving transactions that may result in exceeding the credit limit and would therefore, incur over-the-limit fees? Are these fees imposed at the time of the approved transactions or later, such as at the end of the billing cycle? Are additional disclosures needed regarding the circumstances in which these fees will be imposed?

Answer: Billing statements provide consumers information of account balance, credit limits and available credit in the same manner that a checking account information is provided. Consumers must balance activity in their accounts (whether checking or credit card) to ensure they do not exceed the limits (e.g. going over limit or overdrafting their account). If they do, a fee should be assessed at the time of the over limit (just as it is on a checking account when a consumer overdrafts) to encourage them not to do so again in the future. This also makes the consumer aware in case there have been calculation errors on their part. The disclosures provided are sufficient.

22. For each billing cycle, an "effective" or "historical" APR is disclosed, which includes other "finance charges" that are imposed, in addition to the interest. This may result in a very high APR on periodic statements that is substantially higher than the interest rate on the account because non-interest finance charges are amortized over one billing cycle for purposes of calculating the historical APR for that cycle. How have changes in the market and consumers' use of open-end credit affected the usefulness of the effective APR? Is there data on how disclosure of the effective APR affects consumer behavior? Is it useful to include transaction charges, such as cash advance and balance transfer fees?

Answer: We recommend you look at the number of consumers that frequent payday lenders multiple times and the APR that payday lenders disclose (high double digit). You would find that the high APR does not deter the consumer from using that service. Consumers are very aware of fees, the

amount, when the fee is imposed, etc. Effective APR disclosures are confusing, misleading and incorrect. The periodic statements disclose the fee amount.

23. Are there ways to improve consumers' understanding of the effective APR by providing additional context? For example, should the consumer be informed that the effective APR includes interest, as well as fees, and that the calculation assumes the fees relate to credit that was extended only for a single billing period, which results in an APR substantially higher than the interest rate?

Answer: Effective APR disclosing is confusing and adding an explanation of why it is there – to draw consumer attention to the cost of credit – when the actual fees are disclosed seems to add more confusion and length to the disclosures. More explanation as to why the APR is intentionally overstated will just make these disclosures all the more overwhelming and confusing.

24. Are there other methods for disclosing the costs of credit on periodic statements that may be more effective than disclosing the individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of fees imposed during the billing cycle, or a total dollar amount of fees by type? Would a cumulative year-to-date total of certain fees be useful for consumers?

Answer: Individual fees are the most effective way of disclosing how much something or some action/inaction costs. Effective APRs overstate the cost of credit and should no longer be used. Totaling up fees for a billing cycle or for the year should not be added as a requirement. If consumers continue to use the account, they have agreed that these fees are acceptable. If the consumer wants to know their grand total, either monthly or yearly, they should track and monitor these themselves. There should be no need for creditors to tally these costs.

25. Certain changes to the terms of an open-end plan require additional notice. For these change-in-terms notices, the general rule is that 15 days advance notice is required to increase the finance charge (including the interest rate) or an annual fee. Is this adequate to provide timely notice to consumers?

Answer: Yes. It's usually not the notice that is cumbersome; it is the actual implementation of the change (i.e. IT system issues and testing).

26. There are exceptions to the 15-day notice requirement. If the interest rate or other finance charge increases due to default or delinquency, notice is required, but does not have to be given in advance. Also, a change-in-terms notice is not required if the creditor specifies in advance the circumstances in which an increase will occur. How are account-holders alerted to interest rate increases due to default on the account or on another account that the consumer has with another creditor? Are the existing rules for disclosing increases in interest rates and other finance charges adequate and timely for the consumer? How can they be improved?

Answer: Consumers are warned in the provided disclosures at account opening and on billing statements of the default rate and the circumstances that will trigger it. If the consumer defaults, then the periodic statement discloses the increased rate. The disclosures regarding the default are sufficient. Having the default provisions on the initial notice is very important and helps the consumer understand consequences of default.

27. Under TILA and Regulation Z, consumers receive information about how account balances are calculated, although there is no requirement as to which methods creditors must use. How significantly does the balance calculation method affect the cost of credit, given typical use patterns?

Answer: We believe it is insignificant impact. The verbiage explaining balance calculations is very technical, lengthy and not easily understood. Most people will determine use of card by features, rates and fees.

28. Do consumers understand that different balance calculation methods affect the cost of credit and do they understand which methods are more or less favorable to them? What additional disclosures would be helpful for consumers?

Answer: We do not believe consumers understand the difference or make judgments about usage based on this information. We do not believe additional disclosures are necessary and recommend looking at the requirements for balance calculation disclosure and allow them to be less technical and more informative.

29. Precise explanations with regard to balance calculation methods are required on account-opening disclosures and periodic statements, which can be very complex. Should the FRB permit more abbreviated descriptions on periodic statements, with a reference to where consumers can obtain further information, such as the credit agreement or a toll-free telephone number?

Answer: Yes and we believe that the balance calculation method should not be required on the periodic statement as it is provided with the account agreement.

30. Should Regulation Z be amended to require: 1) that periodic statements should disclose the effects of making only the minimum payment, such as how long it will take to pay the balance or disclosing that making the minimum payment may result in additional penalty fees for exceeding the credit limit if the payment does not bring the balance under the limit; and 2) account-opening disclosures showing the total payments for those credit plans specifically established to finance purchases that are equal or nearly equal to the credit limit, assuming only minimum payments are made? Would these benefit consumers?

Answer: No. This will just add to the already lengthy disclosures. There comes a point that we must say that we've provided enough information. Disclosing information of this nature on a billing statement would be inappropriate. It might be useful at the time a consumer is obtaining credit – except it would be buried by all of the additional disclosures that are required. In our opinion, the FRB should focus their efforts on making resources available for financial education for consumers so they understand the cost of credit – when consumers want that education.

31. Is information about amortization periods for an account readily available or would new systems need to be developed? What would the costs be to implement the changes in Question 30?

Answer: New systems would need to be developed. Additional paper and postage costs would be incurred by the creditors which could potentially impact the consumer. Most creditors have customer service representatives that can help consumers on these types of questions.

32. Is there data on the percentage of cardholders that regularly or continually make only the minimum payments on open-end credit plans?

Answer: We haven't researched that in our financial institution. But this data should be balanced against those cardholders who continuously use the credit cards and pay off their balance each month, avoiding any finance charge or debt.

33. Do creditors typically disclose their allocation methods and how are they disclosed?

Answer: Yes. They are disclosed in the account agreement.

34. Should Regulation Z require disclosure of the allocation method on the periodic statement? Would this benefit consumers and avoid consumer confusion or misunderstanding? (Misunderstandings often occur when consumers accept low promotional rates for cash advances for a limited time and payments are allocated to the cash advance before allocated to purchases that have a higher APR.) What would be the cost of providing the disclosure? What level of detail would provide useful information while avoiding information overload?

Answer: Already the information required on a periodic statement equals information overload. Since the information on the periodic statement is read as it applies to whatever charge is disclosed on it, it may be after the fact and not useful on a periodic statement. If this information were to be added, it would need to be done so at a very high level.

35. TILA allows the FRB to permit tolerances for numerical disclosures other than the APR. What tolerances should the FRB consider? Should the FRB expressly permit an overstatement of the finance charge for open-end credit? Would that address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure that uniformity of disclosure is preserved?

Answer: Ycs. We feel the FRB should permit an overstatement of finance charge for open-end credit.

36. For any changes suggested regarding disclosures, what would be the costs and benefits of these changes, including one-time costs?

Answer: We do not see any benefits for the changes being recommended except that usage if the model forms and clauses provides the creditor certain safe harbors. Changes to the verbiage, format, and type size involve attorney costs, loan system costs and a drain on financial institutions' resources. It also involves changes to what consumers are used to seeing; which can create a strain on financial institutions' customer service staff to handle all of the questions.

37. Are there particular types of open-end accounts, such as subprime or secured credit card accounts, that should require special disclosure rules to ensure that consumers have adequate information about these products?

Answer: Yes. We feel that adequate consumer explanation about the requirements for these types of accounts is essential for the consumer.

38. Are there other issues the FRB should consider in reviewing the content of open-end credit disclosures? Is the information currently provided with credit card applications and solicitations adequate and effective for consumers?

Answer: The industry is very competitive which has driven the card issuer to provide meaningful and effective disclosures.

39. Are there classes of transactions in which the FRB should exercise the exemption authority it has in order to further TILA's purpose, facilitate compliance, prevent circumvention or evasion, or because TILA coverage does not provide meaningful information or protection?

Answer: No.

40. Should the FRB exercise its authority to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

Answer: Business cardholders should be exempted from the TILA coverage. Is the intent of this to have it apply to any and all cardholders, including business? It would provide consistency throughout the regulations if businesses were excluded as they are from most other regulations that were enacted to provide protection to consumers.

41. The FRB is requesting comment on revising TILA's substantive provisions for open-end accounts. These include provisions regarding billing disputes, cardholder liability for unauthorized card use, issuing cards only upon the consumer's request or for renewal or substitution of an accepted card, and the manner that consumers make and the manner that the creditor post payments. Are these provisions adequate and are the creditors' responsibilities clear? Do these provisions need to be updated to address particular types of accounts, practices, or to address technological changes?

Answer: Cardholder liability should be increased when the loss incurred is due to negligence on the consumer's part. Specific examples should be supplied so that is not open for numerous interpretations.

42. TILA's protections regarding merchant disputes, unauthorized use of the account and prohibition against unsolicited issuances does not apply to convenience checks that are offered by credit issuers. Have consumers experienced any problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should all of TILA's protections be extended to other extensions on credit card accounts, such as convenience checks?

Answer: We are not aware of issues. Consumers have the ability to stop payment of these checks.

43. TILA generally prohibits creditors from issuing credit cards, except in response to a request or application. There is an exemption for cards issued as renewals or substitutions to replace an accepted card in which more than one card may be replaced, subject to certain conditions. This allows issuers to use new formats and technologies to issue cards to supplement the traditional card. Should Regulation Z be revised to allow creditors to issue additional cards at anytime, even if it is not for the renewal or substitution of the previously issued card? Should conditions or limitations be attached in these situations, such as a requirement that the card be sent unactivated or providing written, prior notice to the consumer that additional cards will be sent?

Answer: No. This would allow much more fraud. This would not be in the benefit of the consumers. We feel that the regulation should remain as it is – allowing only when requested.

44. TILA requires that a payment made on an open end-credit plan must be credited to the account as of the date the payment is received by the creditor and that creditors may impose reasonable payment requirements. Creditors may also specify a "cut-off" hour for the payment to be received in order to be credited on that day. What are the cut-off hours used by most card issuers? How do issuers determine cut-off hours?

Answer: The processing of our payments determines our cut-off times.

45. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes payment by check, electronic fund transfer, telephone, or by the Internet? What proportion of consumers make payments by mail, as opposed to expedited options, such as electronic payments?

Answer: Yes. We have not researched the numbers regarding how our payments are received.

46. Do the rules and creditor disclosures clearly inform cardholders of the date and time that payments must be received in order to avoid additional fees? How can the disclosure requirements be improved?

Answer: Yes. Our disclosures clearly inform the consumer when their payment should be made.

47. Creditors may use third-party processors for payments. How, if at all, do the operating hours of third-party processors differ from those of creditors? Do creditors treat payments received by a third-party processor as if they were received by the creditor? What guidance is needed concerning the creditors' obligation in posting and crediting payments when third-parties are used?

Answer: The operating hours of our third-party vendor is the same as if it were in our location. We disclose however that the payment must be made to the address disclosed for prompt crediting. We feel that if the creditor wants to recognize the operating of the third party vendor that should be clearly disclosed to the consumer.

48. Some creditors' service centers are open 24 hours a day, 7 days a week, to receive mail delivery and electronic payments continuously. Should the FRB issue a rule requiring creditors to credit a payment as of the date it is received, regardless of the time?

Answer: Payments should be credited as of the business day. If this qualifies as a business day, then the payments should be credited as of the date received.

49. The FRB provides exceptions based on de minimis, or minimum, dollar amounts. Examples include not requiring periodic statements if the balance is \$1 or less and a simplified way to calculate the APR on periodic statements if the minimum finance charge is 50 cents or less. To what extent, if any, should amounts such as these be adjusted?

Answer: They should be adjusted to be \$10 or less or something more reasonable compared to the expense of delivery of the periodic statement.

50. How can Regulation Z and the official staff commentary be amended so that it is more effectively organized and easier to understand? Are there technical revisions to the rules or the official staff commentary that should be addressed?

Answer: Regulation Z should be written so that it is in plain language.

51. Are there any provisions of Regulation Z that are obsolete due to technological or other developments?

Answer: The limitation of coverage to credit under \$25 is very outdated as well as the \$50 limitation of consumer liability for unauthorized errors.

52. Are there any legislative changes to TILA that the FRB should recommend to Congress? For example, for a rule based on a dollar amount that is in the TILA statute, should the FRB recommend adjustments to these dollar amounts and what should be the amount of the adjustments?

Answer: The loan maximum to qualify for coverage should be adjusted as well as the consumer liability amount being increased.

53. Are there any non-regulatory approaches that may improve the effectiveness of TILA's disclosures and substantive protections, such as best practices or consumer education efforts? For example, how might calculation tools that are widely available on the Internet be used to provide better education to consumers regarding the effect of making only minimum payments? Is there data as to the extent to which consumers use these and other types of calculation tools?

Answer: While these may be useful tools for the consumers, these should not be made requirements of TILA.

54. Are there other areas of Regulation Z, in addition to the rules on open-end credit that should be included in this initial stage of review? For example, creditors must provide new disclosures when a closed-end loan is refinanced, which occurs when an existing obligation has been satisfied and replaced by a new obligation based on the contract and applicable law. Different states may take different approaches as to when the obligation is "satisfied and replaced." Should the FRB adopt a different definition of "refinancing" that would lead to a more uniform approach as to when these new disclosures are needed? Also, Regulation Z specifies classes of transactions that are not covered under TILA. These include: 1) business, commercial, agricultural, or organizational credit; 2) credit over \$25,000 that is not secured by real property; 3) public utility credit; 4) securities or commodities accounts; 5) home fuel budget plans, and 6) student loans. Should these be updated?

Answer: Open-end lending involves credit plans under a lending plan. It is important that the structure is supported by the regulation. Once a plan is open-end, subaccounts may be created under that plan. When one subaccount is paid, the plan still remains. Further subaccounts may be created under the plan without it being considered satisfied and replaced.

Thank you for the opportunity to respond to the ANPR. We look forward to the final outcome.

Sincerely,



Gary J. Oakland  
President and CEO



Joe Brancucci  
Vice President of Product and Delivery Channel Management